

COMMONWEALTH OF KENTUCKY
MINE SAFETY REVIEW COMMISSION
ADMINISTRATIVE ACTION NO. **06-MSRC-013**

COMMONWEALTH OF KENTUCKY,
OFFICE OF MINE SAFETY AND LICENSING

COMPLAINANT

FINAL ORDER

ROBERT STANLEY SMITH

RESPONDENT

* * * * *

This matter having come before the Commission on the Joint Motion to Approve Settlement Agreement between the Complainant, Office of Mine Safety and Licensing (OMSL) and Respondent Robert Stanley Smith, and the members of the Commission having reviewed the Settlement Agreement filed on September 11, 2006 in the matter herein, and the Commissioners being sufficiently advised,

IT IS HEREBY **ORDERED** as follows:

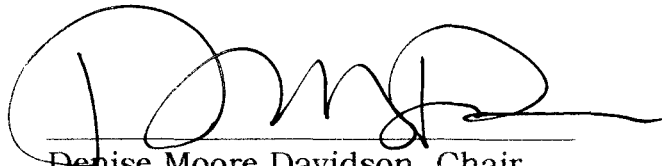
1. The Joint Motion to Approve Settlement Agreement is **GRANTED**;
2. The formal hearing and pre-hearing conference are **CANCELLED**;
3. The **Settlement Agreement** signed by the parties and filed with the Commission is hereby **incorporated by reference** as if reproduced herein in full as a material part of this **FINAL ORDER**.

A copy is attached hereto;

4. This Final Order only resolves the matters referenced herein, and any new enforcement action or subsequent penalties imposed during any probationary period are in addition to and not in lieu of those that may be sought by OMSL for the acts or omissions during that probationary period. This Final Order in no way prohibits OMSL from investigating or filing legal action based upon other activities or omissions by the Respondent not arising from the factual basis of the original violation and resolved herein.
5. This Final Order shall be considered to constitute a “first offense” as that term is defined in 805 KAR 8:010, Section 1(5). Future allegations of separate offenses by Respondent, resulting in an adjudication of guilt by the Commission, shall be deemed “subsequent offenses” as defined by 805 KAR 8:010, Section 1(13);
6. This Final Order represents a final disposition of all issues between the Complainant and the Respondent, in these matters. Failure to comply with the terms and conditions of this Final Order may result in further action by the Commission; and
7. Appellate rights: Pursuant to KRS 351.194(8) and KRS 13B.140(1), an appeal of an order of the Commission must be filed in the Franklin Circuit Court within thirty (30) days of the entry of this Final Order. The petition shall include the names and addresses of all parties of record in this proceeding and shall include a statement of the grounds upon which review is requested. A copy

of this Final Order shall accompany the petition. Copies of the petition must be served upon the Commission and all parties of record in this proceeding.

Entered this the 14TH day of September 2006.

A handwritten signature in black ink, appearing to read 'DM Davidson', is written over a horizontal line.

Denise Moore Davidson, Chair
MINE SAFETY REVIEW COMMISSION

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing ORDER was served by regular mail, postage pre-paid and certified mail to the following this 15TH day of September 2006:

HON. NOELLE HOLLADAY TRUE
RAJKOVICH, WILLIAMS, KILPATRICK & TRUE PLLC
2333 ALUMNI PARK PLAZA, SUITE 310
LEXINGTON KY 40517

Counsel for:

ROBERT STANLEY SMITH
701 MARTIN BRANCH ROAD
MOUSIE KY 41839

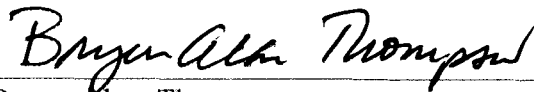
And by messenger mail to:

HON. STEVEN C. BOYD
OFFICE OF LEGAL SERVICES
NATURAL RESOURCES LEGAL DIVISION
#2 HUDSON HOLLOW
FRANKFORT KY 40601
502/ 564- 2356
FAX 502/ 564 - 9212

Counsel for OMSL

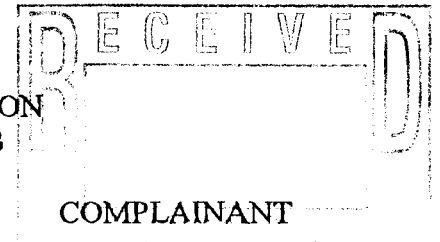
And the original shall be kept on file:

Mine Safety Review Commission
132 Brighton Park Blvd.
Frankfort Ky 40601



Bryon Alan Thompson
Hearing Officer & General Counsel
Mine Safety Review Commission

KENTUCKY MINE SAFETY REVIEW COMMISSION
ADMINISTRATIVE ACTION NO. 06-MSRC-013



KENTUCKY OFFICE OF MINE SAFETY & LICENSING

COMPLAINANT

V. SETTLEMENT AGREEMENT BETWEEN OMSL & ROBERT STANLEY SMITH

ROBERT STANLEY SMITH

RESPONDENT

Come the Complainant, the Kentucky Office of Mine Safety & Licensing ("OMSL"), and Respondent, Robert Stanley Smith ("Smith"), and hereby state that they have agreed to a settlement of the above-styled disciplinary proceeding, according to the following terms:

In consideration of the final resolution of this action against him, and the cancellation of the hearing (as it pertains to him) that is currently scheduled for September 14, 2006, Smith hereby admits that he had violated KRS 352.030(2), et al underground on September 12, 2005, at J & R Coal Company, No. 7 mine as alleged in OMSL's Complaint. Therefore, Robert Stanley Smith hereby agrees to the following:

1. The revocation of his; underground miner foreman's certificate, (#A-54-04), drill operator's certificate (#PE-018-04), gas detection certificate (#MN-259-02), shotfire-conventional certificate (#MN-031-95), and shotfire-solid blasting certificate (#PE-016-04) for two (2) years and the probation of his underground miner's certificate for two (2) years, effective upon the signing of the Order by the Mine Safety Review Commission approving this Settlement Agreement

2. During this two-year revocation and probationary period, Robert Stanley Smith shall comply with all state and federal mine safety laws and regulations. The willful violation by Robert Stanley Smith of any said laws or regulations may result in OMSL filing a motion with the Mine Safety Review Commission to revoke his underground miner's certificate for the remainder of the probationary period.

3. Within 45 days of the effective date of this Settlement Agreement, Robert Stanley Smith must take eight (8) hours of special safety training from OMSL at its Hazard District Office.

4. Robert Stanley Smith further agrees that this Settlement Agreement and any final order issued herein by the Mine Safety Review Commission will be considered by the Commission to constitute a "first offense", as that term is defined at 805 KAR 8:010, Section 1(13).

5. Robert Stanley Smith further states that he has carefully read this Settlement Agreement (or that the Settlement has been read to him), that he has carefully considered the Agreement prior to signing it, and that he understands and agrees to its terms and provisions.

OMSL and Robert Stanley Smith acknowledge and agree that there are no further promises, inducements, representations, or agreements in connection with this Settlement Agreement other than those expressly set forth in writing herein.

Robert S. Smith
ROBERT STANLEY SMITH
701 Martin Branch Road
Mousie, Kentucky 41839

9/6/06
DATE

Johnny Greene
JOHNNY GREENE, Acting Executive Director
KY Office of Mine Safety & Licensing
P.O. Box 2244
Frankfort, Kentucky 40602


9/11/06
DATE

Noelle Holladay True
NOELLE HOLLADAY TRUE
Rajkovich, Williams, Kilpatrick & True, PLLC
2333 Alumni Park Plaza, Suite 310
Lexington, Kentucky 40517
Counsel for Robert Stanley Smith

9.11.06
DATE

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Settlement Agreement Between OMSL and Robert Stanley Smith was mailed this 11 day of September, 2006, to: Noelle Holladay True, Esq., Rajkovich, Williams, Kilpatrick & True, PLLC, 2333 Alumni Park Plaza, Suite 310, Lexington, Kentucky 40517.


STEPHEN C. BOYD
C. MICHAEL HAINES, GENERAL COUNSEL

OFFICE OF LEGAL SERVICES
NATURAL RESOURCES LEGAL DIVISION
KY OFFICE OF MINE SAFETY & LICENSING

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